

IN THE MATTER OF	:	BEFORE THE
FLORENTINE J. BOARMAN	:	HOWARD COUNTY
& ROSETTE A. BOARMAN	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 07-041C

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DECISION AND ORDER

On March 17, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of the Florentine J. Boarman and Rosette A. Boarman for a conditional use to use an existing dwelling as a Farm Tenant House in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District, filed pursuant to Section 131.N.20 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

William E. Erskine, Esquire, represented the Petitioners. Florentine Boarman and Christopher Rand testified in favor of the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The subject property is located in the 5th Election District on the northeast side of Scaggsville Road, north of Fulton Estates Court, and is also known as 12124 Route 216. The subject property is referenced on Tax Map 41, Grid 13, as Parcel 62.

2. Parcel 62 is an irregularly shaped, 51-acre subject property proposed to be subdivided in three lots (Boarman Property Minor Subdivision F-07-190). Lot 4 (8.9 acres) would be located in the front section of the Property. Lot 2, a pipestem lot accessed from MD 216, would be located behind (to the north of) Lot 4. Lot 3, the subject of the proposed conditional use, would be configured as a 47.4-acre pipestem lot with 51 feet of frontage between Lot 4's southeast side lot line and Parcel 62's southeast property line (the "Property").

3. The Property's pipestem section is about 610 deep. Beyond Proposed Lot 4, the Property broadens to a maximum width of about 950 feet. Running through the Property's widest section is the Hammond Beach stream and floodplain, which is mostly wooded. Across the stream to the north, and totally within the Property's back section is Parcel 485, a 4.059-acre property with access from Fawn Crossing Road to the north.

4. The Property's pipestem section provides access for an existing tree-shaded driveway that curves to the northeast past Proposed Lot 4 and leads to the principal dwelling, an existing two-story residential structure, situated about 1,050 feet from the MD 216 right-of-way and 70 feet from the southeast property line. A barn is situated about 110 feet from the principal structure.

5. The proposed tenant house, which is currently used as a farm tenant house, lies to the west of the driveway about 1,050 feet from the MD 216 right-of-way and 320 feet from the southeast property line. A second barn is situated about 230 feet northwest of the tenant farm house. A fence running behind the tenant house and barn corrals horses. In the Property's western section are crop fields.

6. Vicinal properties. Parcel 200 to the north (Proposed Lot 4) is improved with a two-apartment non-conforming use within a single-family detached dwelling approved by BA 02-54N. Transmission lines within the Potomac Electric Power Company's right-of-way run through

the southern portion of current Parcel 200. Surrounding properties are also zoned RR-DEO and are each improved with single-family detached dwellings.

7. Roads. Visibility from the existing driveway appears acceptable, with a 500± foot sight distance to the east and west. MD 216 has two travel lanes within an 80-foot right-of-way. The posted speed limit is 45 miles per hour. Traffic volume on MD 216 was 12,250 average annual daily trips as of 2005.

8. The Property is served by private well and septic.

9. Policies Map 2000-2020 of the 2000 General Plan designates the Property as "Rural Residential." Transportation Map 2000-2020 of the 2000 General Plan identifies MD 216 as a Minor Arterial road.

10. The Petitioners propose to continue using the existing tenant house on the Property as a farm tenant house, allowing a person to live there and work the land for agricultural use. The petition states that the house will be occupied by the current tenant, a single family. Three noncommercial motor vehicles/pickup trucks will be used on the farm. Hours of operation for the daily feeding and care of animals are 6:00-8:00 a.m. and 4:00-6:00 p.m. Seasonal crop planting and harvesting will typically occur over a 3-4 day period in the spring and fall. During this period, farming operations begin about 6:00 a.m. and end about 6:00 p.m. No new structures are proposed.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

I. General Criteria for Conditional Uses (Section 131.B)

1. General Plan: The Howard County General Plan designates the area in which the Property is located as "Rural Residential." The proposed use is typical of many farm operations located in

rural zones. The farm tenant house will be of low intensity. Access will be provided by the existing driveway, which appears to provide safe access for the existing principal dwelling and the proposed farm tenant house. Accordingly, the nature and intensity of the operation, the size of the site in relation to the use, and the location of the existing driveway with respect to ingress and egress are such that the use will be in harmony with the land uses and policies indicated in the General Plan for the district, in accordance with Section 131.B.1.a.

2. Adverse Effect: Section 131.B.2 of the Zoning Regulations requires me to determine whether the proposed use at the Site will have adverse effects on vicinal properties beyond those ordinarily associated with such use. Virtually every human activity has the potential for adverse impact. Zoning recognizes this fact and, when concerned with conditional uses, accepts some level of such impact in light of the beneficial purposes the zoning body has determined to be inherent in the use. Thus, the question in the matter before me is not whether the proposed farm tenant house has adverse effects in the RR-DEO zone. The proper question is whether those adverse effects are greater at the proposed Site than they would be generally elsewhere within the RR district.

The Petitioners have met their burden in presenting sufficient evidence to establish this proposed use will not have adverse effects on vicinal properties beyond those ordinarily associated with a farm tenant house in the RR district:

A) Physical Conditions. The proposal consists of using an existing dwelling currently housing a farm tenant as a farm tenant house. A tenant who will be involved in a bona fide farming operation on the Property will occupy the house. The proposed use will be a typical low-intensity residential use. No new lighting is proposed. Consequently, the use will not generate excessive noise, dust, fumes odors, lighting, vibrations, hazards or other physical conditions

beyond those inherently associated with a farm tenant house in an RR Zoning District, in accordance with Section 131.B.2.a.

B) Structures and Landscaping. The proposed use will involve the existing dwelling, which is some distance from MD 216 and well buffered by distance and tree stands from vicinal properties. Consequently, the location, nature, and height of structures, walls and fences, and the nature and extent of landscaping on the site are such that the use will not hinder or discourage the use or development of the adjacent land and structures more at the subject site than it would generally elsewhere in the zone, in compliance with Section 131.B.2.b of the Zoning Regulations.

C) Parking and Drives. There is sufficient room near the proposed tenant house to park the tenant's personal vehicles. The existing driveway will provide access to the tenant house. No loading or refuse areas are proposed. Consequently, the parking areas will be of adequate size and the driveways will be properly located and screened from public roads and residential uses to minimize adverse impacts on adjacent properties as required by Section 131.B.2.c.

D) Safe Access. The existing drive provides safe access and has adequate sight distance. No acceleration or deceleration lanes are necessary. Consequently, the proposed driveway provides adequate and safe ingress and egress to the Property as required by Section 131.B.2.d.

II. Specific Criteria for Farm Tenant House (Section 131.N.20)

1. The proposed farm tenant house will be occupied by a person involved in a bona fide farming operation of the Petitioner, in accordance with Section 131.N.20.a.

2. The proposed 47.4-acre Property is greater than 25 acres and less than 50 acres, as required by Section 131.N.20.b.

ORDER

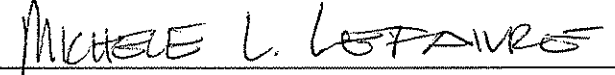
Based upon the foregoing, it is this 31st day of March 2008 by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Florentine J. Boarman & Rosette A. Boarman for a conditional use for a farm tenant house in an RR-DEO (Rural Residential: Density Exchange Option) Zoning District is hereby **GRANTED**;

Provided, however, that:

1. The conditional use shall apply only to the uses and structures as described in the petition and conditional use plan submitted, and not to any other activities, uses, structures, or additions on the Site.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 4/2/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.